

PUBLIC HEARING
COMMISSION ON STATE MANDATES

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TIME: 9:45 a.m.

DATE: Monday, June 5, 2000

PLACE: Commission on State Mandates
State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By: DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNETTE PORINI, Chair
Representative for B. TIMOTHY GAGE, Director
State Department of Finance

PHILIP ANGELIDES, Vice Chair
State Treasurer

-and-

BARBARA LLOYD
Representative for PHILIP ANGELIDES
State Treasurer's Office

ALBERT P. "AL" BELTRAMI
Public Member

KATHLEEN CONNELL
State Controller

HEATHER A. HALSEY
Representative for LORETTA LYNCH, Director
State Office of Planning and Research

JOHN S. LAZAR
City Council Member

JOANN E. STEINMEIER
School Board Member
Arcadia Unified School District

COMMISSION STAFF PRESENT

PAULA HIGASHI, Executive Director

PAT HART JORGENSEN, Chief Counsel

DAVID SCRIBNER, Staff Counsel

PUBLIC TESTIMONY

(In order of appearance)

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A P P E A R A N C E S

PUBLIC TESTIMONY continued

For Educational Legal Alliance and
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State of California
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STUART MARSHALL
State of California
Office of the Legislative Analyst

A P P E A R A N C E S

PUBLIC TESTIMONY continued

For Education Mandated Cost Network:

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ERRATA SHEET

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BE IT REMEMBERED that on Monday, June 5, 2000, commencing at the hour of 9:45 a.m., thereof, at the State Capitol, Room 126, Sacramento, California, before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the following proceedings were held:

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CHAIR PORINI: All right, I'll go ahead and call to order the June 5th meeting of the Commission on State Mandates.

May I have roll call?

MS. HIGASHI: Mr. Angelides?

VICE CHAIR ANGELIDES: Present.

MS. HIGASHI: Mr. Beltrami?

MEMBER BELTRAMI: Here.

MS. HIGASHI: Ms. Connell?

MEMBER CONNELL: Present.

MS. HIGASHI: Ms. Halsey?

MEMBER HALSEY: Here.

MS. HIGASHI: Mr. Lazar?

MEMBER LAZAR: Here.

MS. HIGASHI: Ms. Steinmeier?

MEMBER STEINMEIER: Here.

MS. HIGASHI: Ms. Porini?

CHAIR PORINI: Here.

MS. HIGASHI: We have one item of business, as everyone knows, the "Special Education Parameters and Guidelines."

Mr. Scribner will give a very brief

introduction.

CHAIR PORINI: All right.

MR. SCRIBNER: Centered on "brief."

The purpose of this informational hearing is to hear the Special Education Parameters and Guidelines.

This item has been before this Commission at prior hearings. Staff notes that we have not released any new documents regarding Parameters and Guidelines or an analysis since September 15th of 1999. So all those materials are in your prior binders for those prior hearings.

The claimants and the Department of Finance will make introductory statements on the following issues and respond to the Commission's questions: Offsets, uniform cost rates, and the specific language of the Proposed Parameters and Guidelines.

Will the parties please state their names for the record?

MR. CLARKE: Yes, thank you. My name is Jack Clarke. I represent the Riverside County Superintendent of Schools.

MS. McDONOUGH: Diana McDonough. I represent the supplemental claimants, and appear on behalf of the Educational Legal Alliance and the Education Mandated Cost Network.

MR. STONE: Good morning. Dan Stone, Deputy Attorney General, representing the Department of Finance.

MS. GAITHER: Kathryn Gaither, Department of

Finance.

MR. MURRAY: Anthony Murray for Long Beach
Unified School District.

MEMBER CONNELL: Madam Chair?

CHAIR PORINI: Yes.

MEMBER CONNELL: I don't know what your desire
is today. I would like to move forward a motion, to see
if we have any second for a motion. I'd like to get a
sense of where the board is on some of this. I think
that most of us know where the staff is in their
recommendations and their write-up. And I'd like to move
a motion, if I can, and see if we can get a second.

CHAIR PORINI: Well, my thought was that I
would let both the claimants and the Department of
Finance make a brief statement, and then we would be able
to go directly to your motion, if that's acceptable.

MEMBER CONNELL: I'd be happy to accept that.

I'd also like to maybe think, if we can't get a
second on my first motion, which is all-encompassing, I'd
like to bifurcate my motion, because I think there may be
two different dialogues that we need to have here today
to reach a decision.

CHAIR PORINI: Thank you.

All right. Claimants, if you'd like to
proceed, or the Department of Finance --

MR. STONE: I would just like to raise a
question. My understanding was that the introductory
comments would first go to the offset issue, and then

that would be the subject of discussion. And then following that, we would reach the other issues.

Is that correct?

MR. SCRIBNER: That's correct.

MR. STONE: Thank you.

MEMBER CONNELL: I think we need to bifurcate.

CHAIR PORINI: Yes, if people would speak directly into the microphones, it would be easier for everyone to hear.

MR. CLARKE: I'll be happy to start, if you'd like.

CHAIR PORINI: Please.

MR. CLARKE: Again, my name is Jack Clarke.

And it's my privilege on behalf of the Riverside County Superintendent of Schools to be here today, and I will be brief in my opening comments.

At the outset, I would note that the claimants at the beginning of the hearing some months ago objected to the Department of Finance participating in the proceeding. Since this is a continuation of the hearing, I do not believe I need to reassert that objection, but instead we'll treat it as a continuing objection.

I, at this point, would like to just -- I'm not going to take you through the trek again. This has been 20 years. You all are very familiar with the record in this matter. Instead, I would rather focus on an aspect of this matter, the predicate upon which the Commission entered the Statement of Decision and one of the

underpinnings of the Proposed Parameters and Guidelines which the Commission will ultimately adopt. And that predicate is the Hayes Decision. I know we have talked about it many times before, but there is an aspect of it I believe needs to be emphasized this morning. And the aspect that relates, I believe, to the position of the Office of the Attorney General, Department of Finance, regarding "what is a program that would be subject to funding offsets."

I believe the Hayes case told us that. And it is different than what the department is asserting. The department has been asserting that the special education -- to use their term, the program contained in the Education Code, is what this Commission should be looking at. To the extent that that was discussed 20 years ago, the Hayes court made it clear that that is not what we've been doing for the past five years.

The Hayes court told us, quote, "We add that, on remand, the Commission must focus upon the costs incurred by local school districts and whether those costs were imposed on local districts by federal mandate or by the State's voluntary choice in the implementation of the federal program."

And then the Hayes case, with crystal clarity, focuses us on what we need to do and what we've been doing. Quote, "To the extent the State implemented the act by freely choosing to impose new programs or higher levels of service upon school districts, the costs of

such programs or higher levels of service are state mandated and subject to subvention," end quote.

For the last five years we've gone through various provisions of the Education Code, and this Commission has found eight specific requirements where the Education Code exceeds federal law. Thus, the analysis needs to be whether there was any specific funds for those eight specific education requirements, not some general alluding to programs, not some general statement of voluntary funding -- whether there was funding for those eight areas.

This goes into the issue of offsets. And I would ask my colleague and co-counsel at this preceding, Diana McDonough to address that specifically.

Thank you.

MS. McDONOUGH: I know the Commission is, again, well acquainted with the code section, but I'd like to pass it out, so you have it in front of you, as we discuss it.

Mr. Stone hasn't read it, so I'm providing it to him.

Courtesy is our motto here.

MEMBER CONNELL: I really appreciate the big type.

MEMBER BELTRAMI: Yes.

MEMBER CONNELL: For those of us who have to get up early in the morning to fly to Sacramento, we like things clear.

CHAIR PORINI: A good focal point.

MS. McDONOUGH: Please don't draw any inferences about the age of --

CHAIR PORINI: Absolutely not.

MS. McDONOUGH: As the Commission knows, the issue of offsets is governed by Government Code section 17556(e), which you have in front of you on the first page here. And that statute has three requirements to allow an offset.

There must be additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient. Okay, additional revenue specifically intended in an amount sufficient.

We have very carefully gone through the Parameters and Guidelines and looked to see where did the statute allocate specific revenue for these eight mandated programs. We have, in every instance, provided an offset on the Proposed Parameters and Guidelines in those specific areas. But we are unwilling and we believe that the Commission should be unwilling to find that the general special ed. funding provision allows the language to be interpreted to say that you must first use general special ed. funding for excess state mandates.

If you look at the second page in the little packet that I've handed you, you see Education Code section 56826. That provision states, "Funds apportioned to districts, special education local plan areas, and county offices pursuant to this chapter, shall be

expended exclusively for programs operated under this part."

As DOF has noted previously, this provision provides maximum discretion to local agencies to use these funds. As long as they're used for special education purposes -- that's the programs operated under this part -- the agency may legally expend those funds.

Now, can the Department of Finance make the case that this general funding provision requires local agencies to spend state funds first, on the state mandates? Is there anything in this wording that gives rise to that? We believe the answer is clearly "no."

The plain language of the section makes no reference to providing these funds first to excess state mandates. The Legislature intended to allow maximum flexibility.

The problem here arises because the Master Plan was underfunded. If funding were sufficient to pay for the program for all parts of the program, we would not be here today. Because the problem is underfunded, you cannot find that the State's obligation has been paid for, unless you find that this statute obligates local agencies to pay for state mandates first.

Now, let me just discuss that for a minute. The figures that we've bandied about, back and forth, there are all kinds of figures here. But there's one that's very clear, and there's no disagreement on it: Local agencies -- there has been a shortfall in the

funding for special education by about 20 percent or more annually.

Assume that the excess state mandates cost 10 percent of the total funding or less. There is a 20 percent shortfall. The state mandates cost 10 percent or less. What's the result of those figures? A local agency could have expended all state funds on the special education program in accord with the law, that is, on programs under this part, and still not covered one dime of the cost of the excess state mandates.

By example, in '96-97 -- and I pick this year because DOF picked it, and we've got figures on this year -- special education costs statewide were 3.9 billion dollars. Special education revenues statewide, including the statutory local General Fund contribution was 3.1 billion. 3.9 cost, 3.1 billion revenues. There was an 800 million-dollar shortfall in '96-97.

DOF estimates that the excess state revenues in '96-97 cost about 139 million dollars. In other words, easily inside that 800-million shortfall. So a local agency could have spent every cent of that 3.1 billion dollars and not had one cent for the excess state mandates; but, rather, required to pay out of their own pockets.

CHAIR PORINI: Questions?

Mr. Angelides?

VICE CHAIR ANGELIDES: You said, 139 million "excess state revenues." Did you mean "excess state

mandates"?

MS. McDONOUGH: Excess -- cost of excess state mandates. Pardon me, I said that wrong. Thank you.

Is everybody following that, that I misstated that?

Now, let's just look back at 56826, in front of you. Is there any honest way that you can say that these funds, under this code section, had to be paid first to the state mandates? We believe there isn't one, except for the specifics we've noted before: Community Advisory Committee, certain parts of the resource specialist program, extended school year. If that's true, offsets cannot be allowed as a matter of law.

Now, I'd like to talk about the actual facts of how the money was allocated out of 1870. The statute says, "Additional revenues specifically intended in an amount sufficient." We have talked about the wording of the funding statute and why we believe this does not support DOF's arguments that state funds must first be used for the state mandates.

Now, let's talk about the facts of the funding of 1870. Were there actually additional revenues that were provided to fund additional programs? What our research shows is that there were not such revenues. There was COLA of nine percent. There was not additional funding for these additional mandates, with the exceptions that we've noted.

Paul Goldfinger, Vice President of School

Services, will speak for us at this point. Paul has worked as an expert in school finance for over 27 years. He has been a consultant to the State Department of Education and to DOF. Since 1989, he's been the Vice President of School Services.

Everyone, I'm sure, in Sacramento knows that Paul is a foremost authority in school finance. He's actually written a book on that fascinating subject, "Revenues and Limits." That has been -- hey, I can say for my school district clients, it's a very -- it's a red-hot seller, and nobody can fill out their state forms without referring to Paul's book.

So Paul will discuss the actual funding that resulted from 1870.

MEMBER CONNELL: Paul, I have one question before you begin. Did you start out with a full head of hair at the beginning of this?

MR. GOLDFINGER: No comment.

MS. McDONOUGH: We've coached him here for you.

CHAIR PORINI: And if I could just add, before you begin; remember, we have -- while I'm not imposing any formal time limits, we do have some limits that we'd like to stay within.

MR. GOLDFINGER: Right, I understand brevity is helpful.

What's being handed out to you are copies of a historic document. Under Chapter 797, the State implemented a new funding model for special education

which became known as the "J-50 funding model," after the J-50 forms that were handed out. And what you have before you is the initial year J-50 funding forms.

What we believe is a key issue is not whether there was more money appropriated for special education in 1980-81. There's no question that there was. The issue is, did you get more to cover these mandates or did you get more because you had to do more? And our analysis indicates that there was increased funding that was available for a COLA, there was a nine percent COLA that year. It sounds very high. But you might remember in 1980, inflation was running over ten percent, and the average school district --

MEMBER CONNELL: Interest rates were 14 percent.

MR. GOLDFINGER: -- and the average school district, inflation increased -- the revenue numbers were about eight and a half percent for that year. And so the special education COLA was very much in line with other factors in that year.

You got more money if you added additional special education instructional units, what people called "growth units"; if you added more extended-year offerings, if you increased the number of non-public school placements. You didn't get more just because -- if you ran the same level of program you didn't get more money other than the nine percent COLA. We feel that's a key issue here with regard to some of these mandates.

Some of these mandates could only have been funded through additional support service funding. And the J-50 funding model said, in effect, go back to 1979-80, identify your costs for instructional services, identify your costs for support services, determine a ratio of support costs divided by instructional costs. For example, if an agency had a 60 percent ratio, 1979-80, the State said, "We're going to give you a 60 percent support ratio in '80, '81, and every year thereafter." Every year thereafter lasted for 12 months. And so people, in my example, would have had a 60 percent support ratio in 1980-81, even though they had an obligation of additional support costs, such as the written consent mandate.

There was a huge shortfall in special education funding in '80-81, and the State eliminated that deficit; not by providing more money, but by making changes in law that reduced entitlements beginning in 1981-82. The first of these was to cut the COLA, whereas revenue of the COLA was close to eight percent. The average unified district got 7.9 percent in '81-82. The special education COLA was only five percent, by state law, in that year.

The State imposed a squeeze or reduction in high support ratios; so instead of fulfilling the promise of perpetuating the historic support ratio, any school agency with an above-average support ratio had a squeeze or reduction in that support ratio, down to the statewide

average. So instead of getting more for support, they got less for support beginning in '81-82. And, furthermore, there was a cap on growth units.

And so when we look at all of these factors, we go, "You need to answer the question, was this mandate the increased costs of the mandates funded in '80-81?" And we go, "Potentially." The nine percent COLA was a high COLA, and potentially an agency's total costs for special ed. were covered by total funding for special ed. in that year.

But you can't just look at that one year; you have to look at every year, beginning in '81-82 when support ratios were reduced, when growth units were capped, when the COLA was cut. You can't say, "Well, we gave you more money in '80-81. These mandates are covered."

You have to look at every year since then. And our conclusion is that these programs were not funded in subsequent years; although for some agencies, they may have been funded in '80-81.

One final remark that I want to make, and I know there's been discussion and depositions to the effect that there should be a consideration of a proportional offset. I've been calculating special education encroachment each year, and in most years it's been averaging about 25 percent of total costs.

So the argument is, well, if 75 percent of special education costs are funded by state aid, federal

aid, property taxes, revenue limits, then the State should only be paying, at most, 25 percent of these additional mandates. And this is a misunderstanding of the difference between marginal costs and average costs. But, yes, the average costs were reimbursed 75 percent. But if an agency spent one more dollar for special education, they got zero additional state aid. And so that marginal dollar was not reimbursed 75 percent; it was reimbursed zero.

And so the proportional offset argument may have been appropriate for a case that was cited where there was one state agency that was reimbursed 90 percent of every dollar that they spent; and when there was a finding of an additional state mandate, the State said, "We've paid 90 cents on the dollar. We only owe you ten cents on the dollar."

That is accurate in that case, because in that case, the local agency, when they spent one more dollar, they already received 90 cents back.

Here, I want to highlight again, local agencies spent one more dollar; they got zero cents back. There is no marginal reimbursement.

Thank you.

CHAIR PORINI: All right, Mr. Murray?

MR. MURRAY: Yes, thank you. I'll be very brief. And I have a point to make that is somewhat more simple than the last one we've made.

As you've heard, the DOF now wants to move all

of the money onto the State's side, and say that that's counted first. This case has been pending since 1980. That argument was first made by the Attorney General in October of 1998.

And here's what it was saying before that:

"In the realm" -- this is a quote from the Attorney General's brief on March 1, 1996. "In the realm of California's special education requirements, the question whether state law exceeds the federal mandate is directly answered in Education Code section 56000. There, the Legislature clearly announces its intention to comply with and not to exceed the requirements imposed by federal law." Only to comply with federal law, not to create new mandates and not to move money from the federal mandate to the state mandate.

Continuing, this is still in March of 1996, the Attorney General said this: "The Legislature was conscious of these overarching federal requirements, and enacted related state laws with the express objective of effectuating those federal mandates without going beyond them."

So, of course, that was then and this is now. It was then arguing that there shouldn't be any mandate at all. And now that a mandate has been found, it's saying, "Well, if there's a mandate, the Legislature really intended to put all the money into that mandate," even though it was saying in 1996 and before that, that the Legislature did not intend to do anything except to

comply with the federal mandate.

We think that the staff is correct, and we think that the Attorney General was correct the first time.

CHAIR PORINI: All right, Mr. Stone?

MR. STONE: Good morning.

On the subject of offsets, this Commission has had really two very different issues presented to it over the course of time. One is the broad policy question, which I submit is not appropriate for this Commission's consideration; and that policy question is, "What is the appropriate amount that the State should contribute to the funding of overall special education costs in the State?"

Last week, or ten days ago, we heard Mr. Waters talk about how there's been 20 years of litigation here, how there's incredible encroachment upon regular education funding by these special education costs; and how, because this is a state budget surplus year, the matter should finally be remedied.

Those all go to the broad policy question, which is not before this Commission. They're irrelevant here, but I wish to address them more in a moment.

But the second more narrow question is the legal question that the Commission is called upon to decide, and that is the question of whether there are any unfunded state mandates within that broad special education framework. And that's a two-part question.

First, do the state requirements exceed, in any fashion, the federal requirements? And the Commission has found that they do, in a respect.

Second, is the state funding for special education insufficient to cover those components that can be attributed to state law rather than to federal requirements? That's the question before you today.

On the subject of 20 years of litigation, I would remind the Commission that the first 12 or 13 years of that litigation -- that is, between 1980 and 1992 -- found the State arguing against the claimants' position that there is no federal mandate; that every penny of costs required under special education, are costs mandated by the State, that the State was free to disregard the federal requirements.

So that's 12 or 13 out of the 20 years right there. And, of course, in the Hayes Decision, the State prevailed. The claimants were found to be entirely wrong in saying that there was no federal mandate. In fact, the State had no choice but to follow the federal mandate. So that's more than half of the 20 years.

Then we had two or three years of litigation based on procedural issues, where the claimant wished to alter the claiming period. And then the Commission opened the matter up to supplemental claimants and so forth. Certainly that can't be attributed to the State.

And then the remainder of the litigation was an attempt by the claimants to identify those subject areas

where they said the State did exceed the federal requirements.

In essence, as we've described and as the claimants have ultimately agreed, this began as a vast forest. The claim was to every special education cost. They looked to the forest. Then when the Hayes decision said, "no, there's a federal mandate here," they then looked for trees on the periphery, if you will, that they could attribute to the State -- the trees that grew beyond the boundaries of the federal forest -- and they found a few.

So the question today, following that analogy, is whether the State has provided enough water to keep the State trees alive. That's the only issue.

It's very clear in the law that this Commission cannot say that the State is required to water the federal forest. Those trees are put there by the federal government. The State had no choice in having them there. So the question now is whether the state funding that was provided was enough to take care of the trees that the State insisted be grown. And there, the evidence is undisputed.

We have Kathy Gaither's declaration, using one year, as an example, where she estimated costs not based on Finance's assumption, but based on a very broad reading of the most generous estimates that could be based on the claimants' view of things. And that's where the figure 139 million came in.

And then we compared that to the funding that the State provided and found that it was somewhere between 12 and 20 times higher.

The State trees are already well taken care of, and the State should not and cannot be made to provide yet more water for them.

In addition to the 20 years of litigation, we heard about encroachment, not only from Mr. Waters last week but from Mr. Goldfinger this morning. Encroachment is a serious problem, but it's a problem at a policy level. If, in fact, the federal program requires so much in the way of programs and services for special education students that it is costing the regular education budget, that's attributable to the federal mandate. It's not a matter that this Commission is equipped to deal with, and it's not the State's fault that the federal program is so broad. In short, it's irrelevant here.

As is, of course, any comments regarding the State budget's surplus this year, the Commission is called upon to determine whether there are unfunded State mandates. And it must do so, regardless of the current economic health of either the State or the local claimants.

Now, you may ask why the claimants spent 13 years litigating their claim that there's no federal mandate. And I suggest the reason is because without that determination, without the courts upholding them, that the State was free as to disregard federal

requirements, they have no case here, precisely because the State trees have plenty of water. It's undisputed that there was plenty of funding, undisputed that the funding was specifically intended to fund the State special education program, undisputed further -- well, I suppose it is disputed but it can't in good faith be disputed -- that the Legislature intended those monies to go first to any state-mandated portions of the special education program.

We saw a legislative history to that effect, and the Commission now has the benefit of two reports from the Legislative Analyst's office, explaining quite clearly why that was the Legislature's understanding and intent. They gave much more money than any state-mandated components could require, but they intended that money as a first priority to go to any state-mandated components that were ultimately determined to exist.

This case reminds me of a case that I handled some years ago, called the "Comparable Worth Case." It was a federal class action lawsuit brought by CSEA. And they had an interesting theory that would have netted them, I suppose, a lot of money -- maybe billions of dollars. Their claim was that predominantly female classifications within the state's work force were underfunded. Their pay was set too low, when you did a comparison of working conditions, of required education and expertise, of responsibility as, for example, between

a high-level secretary or an office assistant or a state librarian -- these are positions that were predominantly female -- versus a mechanic in the state garage or a landscaper, in the State landscape department or something like that. They said, "It doesn't make any sense that the latter gets paid more than the former. It's not fair. We can do an analysis that shows that the State has to provide substantially higher salaries for these predominantly female positions."

An interesting theory. They filed a case in the federal district court in Northern California, and that's when I joined the Attorney General's office as part of a team, litigating the defense.

Their problem was that just a couple years after they filed the case, the Ninth Circuit Federal Court of Appeals issued a decision involving the State of Washington, in which it said that the Comparable Worth Theory has no legal validity. That if a state provides salaries at market levels, that's enough. They can't be required to do this separate analysis and to change salaries and proportions of salaries based on this Comp Worth Analysis.

At that point their case was blown. Rather than stopping the litigation then, as these people could have stopped litigating after the Hayes Decision, the Comp Worth plaintiffs changed their theory and said, "Well, never mind that, we'll still say that the state is discriminatory in the way it sets predominantly female

salaries as compared to the market for those same positions."

So we litigated for several years before a judge, I should say, who was particularly sensitive to discrimination lawsuits. She, herself, was a great litigator before she took the bench and was, in fact, the general counsel of the National Organization of Women before she took the bench. So we went on for several years and brought forth a lot of evidence showing that, if anything, the state was more progressive than the market in setting salaries for predominantly female positions. And ultimately the judge dismissed the case. She said, "Why are we here? This is a waste of everyone's time. There is no validity to this new theory."

And, of course, the Ninth Circuit's decision wipes out the first theory.

That case reminds me very much of where we are now, because once it's clear that there is, in fact, the federal mandate and that the State's program is predominantly designed to implement the federal mandate, then there's no claim here. It's a sham. It's silly. Certainly they've been trying to try it in the press, certainly they've been trying to use it as leverage for getting additional funding from the State. That's fine.

But when it comes down to today, when we have a hearing on the actual merits of this case, under the law, they have to lose, just as the CSEA plaintiffs had to

lose because the Hayes case required them to change their theory and because, under their new theory, it's an untenable proposition to say that the State has not provided sufficient money already to cover the state-mandated components of special education.

That leaves wide open for the policy makers the question of whether the State should up its contribution to special ed, generally. I'm certainly not saying they shouldn't. I'm taking no position one way or the other. And there's no point in taking a position before this forum on this day as to those broad policy issues.

But on this claim, there is total offset, and the Commission must so find. If it doesn't, we, of course, have suggested that proportionate offset is the very most the State can be required to pay. That is, a recognition that the State and the federal government have already provided a large percentage of the costs of the entire program, the entire forest; so that it's unrealistic and unfair for the Commission to assume that local monies were the only thing that went into funding, to watering these peripheral trees; and that all of the federal money and all of the State money that the locals have received over the years has to be deemed to have been devoted simply to the federal forest. That's unrealistic and unfair.

But we believe the total offset proposition is the one the Commission must adopt.

Thank you.

CHAIR PORINI: Commissioner Connell, did you have questions of Mr. Stone?

MEMBER CONNELL: Yes. First of all, as the Chair of the State Lands Commission, I don't think I've ever heard an analogy that is more misplaced than referring to special ed. children as "trees." I mean, I personally think that analogy is unattractive in this relationship. And we're not watering trees; we're trying to care for children who have tremendously important needs. So I, number one, would like to stand at a distance to that analogy; as well as your analogy on comparable worth. There's some of us who still believe that that lawsuit was a valid lawsuit, and certainly not a waste of the effort to try to recognize women's contribution to State service. But I won't go there on either of those analogies.

I want to focus here on the issue which I want you to address, which is the issue of "marginal" versus "average" costs. And I thought that that is really the issue that we need to understand. Because your argument that we need to -- if we decide to go with a route of recognizing that there has been -- and I think there has been, as I've stated now for close to five and a half, six and a half years here -- there has been a failure to fully fund our obligation for special ed.

And to then backtrack and get compromised by a board decision to randomly select proportional costs is, on its very face, unfounded. If you understand

"marginal" versus "average" costs, you can't do that.

The argument just doesn't hold water.

Now, I'd like to see your response to "marginal" versus "average" costs. I mean, I thought that the presentation was accurate on its economic merits, and I'd like to see your economic defense.

CHAIR PORINI: Mr. Stone?

MR. STONE: Well, as we've said, and as the Legislature said when it pronounced this program and when it funded the program, the first call on the state funding is to take care of any and all state mandates. So I would agree with you, that's why we think the total offset is the appropriate theory, because the state monies, first and foremost, go to the state-mandated components. It's 100 percent. It's not marginal in any fashion.

If there are monies left available -- and, in fact, there are, hundreds of millions per annum -- left available to assist in the federal funding, then that's where they go.

But the "marginal" versus "average" has no application where the State legislature has said and the LAO has confirmed that the first call on the state money --

MEMBER CONNELL: How else would you justify "proportional"? You were saying that should we make the decision to move forward on reimbursing the school districts, you could not agree with the staff

recommendation, that you would have to go with proportional distribution.

MR. STONE: Oh, I'm sorry. So your point went simply to proportional?

MEMBER CONNELL: Yes.

MR. STONE: Okay.

MEMBER CONNELL: Because your whole argument of "marginal" versus "average" is that you cannot defend the proportional value.

MR. STONE: Well, that presupposes that the things that the Commission has found 18, 20 years later, to be state-mandated components, were just added and were not part of the overall program. They were a part of the overall program.

And all we're saying is that the purpose of reimbursement, the purpose of subvention under the Constitution, is to reimburse locals for costs that they necessarily incurred as a result of the state mandates.

They didn't -- this was all part and parcel of an overall program. The State initially thought that it was entirely implementing the federal program. It's now been determined, decades later, that some components of it went beyond the spirit or the actuality of the federal requirements.

But they were all together in concept, and they were all together in funding. So only the costs that the locals actually incurred in any given component were their costs. The rest were funded by outside sources,

either state or federal. And for them to recover those costs that the State has already provided --

MEMBER CONNELL: Let's respond to the specific analogy used here. I think your name is Paul?

MR. GOLDFINGER: Yes.

MEMBER CONNELL: All right, Paul, the 90 cents versus the 10 cent reimbursement.

What is the response on that?

MR. STONE: Well, the response is that the stated did provide -- we don't know the percent. It would require a great deal more factual findings by the Commission -- but assuming, as we did in our papers, that it's roughly 70 percent state funding and 10 percent federal funding, then it's not -- that's what I'm saying, it's not as if these requirements were added at the margin and, therefore, required brand-new funding. They were part of the overall program, so that it is analogous to the case that we cited, in that the State has already provided, using this example, 70 percent of all special education funding and, therefore, that has to be attributed to all special education costs. It's not a new program.

The state-mandated components are not --

MEMBER CONNELL: Let me get Riverside's response to that.

MS. McDONOUGH: As the supplemental claimants, let me just say that I think our analysis on two fronts, one is in the statute, does it provide additional funding

for those state programs? Answer, no.

Second, if you look at the actual facts, do you see an additional funding for that additional marginal cost? Answer "no," as Mr. Goldfinger just stated.

MEMBER CONNELL: Madam Chair, again, I tried to move earlier a motion, and out of respect for wanting to listen to the testimony, I deferred to do that. But I would like to move that we adopt Option 1A of the staff write-up to allow the Parameters and Guidelines to include language to explain that additional revenue specifically intended to fund the cost of the state mandate shall be deducted from the costs claimed.

And I further urge that we adopt Option 2A of the staff write-up to find that the use of Uniform Cost Rates is consistent with the Commission statutes and regulations.

CHAIR PORINI: May I ask, before we go to the second, Commissioner Angelides had requested time to ask some questions.

MEMBER CONNELL: Can we get a second for the motion, since it's on the floor?

MEMBER STEINMEIER: Yes, you can have a second.

CHAIR PORINI: All right, we have a motion and a second.

Mr. Angelides?

MEMBER HALSEY: Can I make a substitute motion?

CHAIR PORINI: Let's take questions from Mr. Angelides first.

VICE CHAIR ANGELIDES: Mr. Stone, specifically to you, and that is; where you refer to the statute to the Legislature -- where you refer to the legislative intent, the state funds, which fund the state mandate, could you point me to that?

MR. STONE: Well, I would refer you to the Legislative Analyst's office reports. They cited both enrolled bill reports, language like that, based on your questions concerning legislative --

VICE CHAIR ANGELIDES: All right. Let me back up. Is there anything in the statute beyond what the claimants have shown us today with respect to a specific designation?

MR. STONE: No. 56826 says the money the State provides has to be used for special education, and then they've pointed out that there are four additional areas in which some money has been earmarked for specific programs. Beyond that, no, we rely on the legislative history.

VICE CHAIR ANGELIDES: Well, let me ask you in terms of legislative history, not having that before me today -- and that was written at the time of original enactment?

MR. STONE: Correct, as well as thereafter. I believe they found reports periodically in which the Legislature's understanding was repeated.

VICE CHAIR ANGELIDES: Did that speak to marginal costs over time, as program expansions occurred?

MR. STONE: I don't know whether it did specifically or not, Mr. Angelides.

VICE CHAIR ANGELIDES: Okay. Let me ask a second question of you. What's the legal basis for "proportionality"?

MR. STONE: It's the very term "reimbursement," is to provide money for costs incurred as a result of state mandates.

VICE CHAIR ANGELIDES: Well, here's a struggle, but I want to go to this for a minute: At one level, you've got the claimants speaking to specific designation, and the point that the law requires specific designation of state funds for specifically mandated state programs. That's one end of it.

On the other end, you have essentially your claim, which, based on legislative history, is, in fact, we did fund those mandates.

I guess what I'm groping for is, there doesn't seem to be a legal basis, you know, going back to your earlier points here, as to separating the legal mandate of the Commission from the larger political dynamic of a resolution of special education claims. What is the specific statutory framework for proportionality -- or even case law history for proportionality?

You know, it may be -- it may be a resolution which, in the context of a settlement, is a rational way to approach a settlement. I don't know what's our basis for doing that. And I ask that because I've struggled

with this. You know, as you know, Mr. Stone, I was a Commission member who, along with my fellow commissioners, urged the negotiations to take place. And that, while I believe that was a very worthy effort because we stood the chance to resolve this 19- to 20-year-old discussion and bring resolution and proper funding to special education forthwith, that didn't occur. And in that context, some form of proportionality as the basis for settlement made sense.

My question is, what's the basis for the Commission on a statutory case law basis of doing that?

MR. STONE: Well -- and maybe this goes to the "marginal" versus "average" argument as well -- the years in the claiming period are all behind us. The costs have been incurred and the funding has been provided. And there was nothing marginal, of course, about any of the programs. So in that sense, it's a factual question of what the funding picture was, what the pattern was.

I remind you that the proportional offset is our estimation of what the most that the State should suffer by way of a claim is, if the total offset is rejected.

VICE CHAIR ANGELIDES: Right. I know it's not -- that's what I'm getting at, I know it's not your advocated position. It is more, "Commission, if you can't find our way, here's a middle ground," which it seems to me at one level, they're saying, "There was no specific designation, therefore, you owe for these eight

programs."

What you've really been saying is, "Look, if you look at the totality of our funding, it exceeds the mandates we have."

MR. STONE: By far, yes.

VICE CHAIR ANGELIDES: Right. But there are two very distinct arguments there, and proportionality comes in only as a dispute resolution mechanism.

MEMBER CONNELL: Well, you can't get --

VICE CHAIR ANGELIDES: Let him respond, if he could.

MR. STONE: We called it a "fallback" rather than a dispute resolution. A fallback --

VICE CHAIR ANGELIDES: I just wanted to be clear on the basis, you know --

MR. STONE: Okay, but the legal position for total offset is that precisely the three points within section 17556(e) that Ms. McDonough alluded to have been met here. That is, the State did provide revenue.

It has to be remembered that this was the special education program. These individual components were not deemed to be separate items. And the special education program was, in fact, funded by the State.

VICE CHAIR ANGELIDES: Can I ask you one more question for both claimants and respondents? And that is, if you look at the last phrase there, "In an amount sufficient to fund the cost of the state mandate," was there a presumption the State could fund some or did it

have to fund all?

MR. STONE: Within the statute?

VICE CHAIR ANGELIDES: Yes.

MR. STONE: Our reading of the statute is that anything that the State funds, whether it's totally sufficient or not, has to be credited as an offset, if that's what you're asking.

VICE CHAIR ANGELIDES: That is what I'm asking.

MR. STONE: But we do have the number evidence that this far exceeds the costs -- the funding that actually was provided by the State far exceeds the costs.

MEMBER CONNELL: And our position is that we have to have additional funding totally sufficient to cover a state-mandated cost because the State controls that cost. The State can decide to eliminate that cost; the local agency can't do that.

VICE CHAIR ANGELIDES: All right. Let me now ask one last question and if there's further discussion, I may want to make a statement before we go to roll call, Madam Chair, but let me ask this one, if I may.

CHAIR PORINI: Please.

VICE CHAIR ANGELIDES: And that is, what's your response, claimants, to the assertion that the Legislative Analyst's legislative history, in a sense, supports the Department of Finance and the Attorney General's position?

MS. McDONOUGH: On behalf of the supplemental claimants, let me say this: The LAO read the reports

that the Legislature got in 1980. And if you read those reports, what they say is, there are unknown mandated costs. And then it says, "We presume, of course, the Legislature knew that it first was going to fund these mandated costs. The LAO cites nothing to show that. There is no language to say, "First, we're funding those mandated costs."

It's like a mother reading something from a kid, and saying, "What he really meant was this." It's not there.

MR. MURRAY: May I make a very brief answer to that?

CHAIR PORINI: Mr. Murray?

MR. MURRAY: The statute, Education Code 56000, which is not mentioned by the Legislative Analyst at all and not mentioned by the Department of Finance, now that it's arguing that all the money should first go to the State side, that statute says, "It is also the intent of the Legislature that nothing in this part shall be construed to set a higher standard of educating individuals with exceptional needs than that established by Congress under the Individuals with Disabilities Education Act."

Here's the Legislature saying exactly what it intends: It wants to fund the federal mandate. There is absolutely nothing in that legislation or in its history that says what the LAO claims it says.

CHAIR PORINI: Ms. Halsey?

MEMBER HALSEY: I have a question.

What year was Government Code 17556(e) enacted?

MS. McDONOUGH: I believe it was 1989. I'm not positive, but it was after the time this legislation was enacted.

MEMBER HALSEY: So it shouldn't apply to the first nine years of your claim?

MS. McDONOUGH: Well, as we've discussed extensively in the briefs, our view is that it does apply because it states existing law. And there was a previous Revenue and Taxation Code which was worded very similarly, and this was simply a code section to amend that.

CHAIR PORINI: Any further discussion?

Mr. Beltrami?

MEMBER BELTRAMI: Is Ms. Halsey finished?

MEMBER HALSEY: Yes.

MEMBER BELTRAMI: Madam Chair, may I ask some questions?

CHAIR PORINI: Yes.

MEMBER BELTRAMI: The quote, Mr. Goldfinger, it says -- by the LAO -- is that, "Given the evidence that the Legislature and the Administration were fully aware that some procedural elements of Chapter 797 created a state-mandated local program, it is difficult to imagine the State had any higher priority use for its resources than funding its Article XIII B obligations. The Legislature and the Administration's intention of this

Constitutional obligation is evident in the bill analysis prepared by their fiscal staff."

I assume, in your work, you were following bills that dealt with the school financing.

Do you remember these kind of bill analyses, that said that? This is on Bates 3161.

MR. GOLDFINGER: Right. I read all of the LAO reports, and I have great respect for the LAO. This is one area where I strongly disagree with their analysis and findings.

Again, I want to emphasize their analysis only looked at funding in 1980 and '81. It did not look at funding in subsequent years, when the funding model was changed, to make very significant cuts in funding. I find their analysis and conclusions a leap of faith.

CHAIR PORINI: Mr. Beltrami?

Is there someone here from LAO, perhaps?

Great. Thank you.

I will only say, while people are coming forward, that I went to the archives and pulled the analysis and did, in fact, see that document -- the analysis that the analyst refers to in their write-up from fiscal staff.

Please proceed. Sorry.

MS. O'MALLEY: Marianne O'Malley from the Legislative Analyst. I also have with me Stuart Marshall.

I just want to state for the record that, as

you know, we are not a party to this case; however, we have a broad amount of expertise in the area of legislative and fiscal history and would be happy to help you understand our perspective on this matter.

We submitted an earlier -- in October of last year -- a couple of different reports to this Commission regarding our perspective on the special ed. mandate. And essentially what we were doing, when we were walking through the special ed. mandate claim is, we were saying "What was prior law before? What was the State's obligation to special education before?" and then, "How much did we increase funding, vis-a-vis the baseline obligation of the State the year we passed the Master Plan for special ed?"

The difference between the old funding formula -- the State obligation for the old special education program and the new special education program, the State increased its funding by 90 million dollars. It was all the staff analysis, the Legislative Analyst's Office, the various fiscal committees, the Department of Finance cited that sum, and indicated that while we knew there was some procedural elements of this special ed. Master Plan that were likely to be beyond the federal requirements, that were likely to actually impose a mandate, that 90 million dollars looked like it was far more than sufficient to offset those small procedural requirements.

Now, Mr. Goldfinger is correct, we have not

looked at that sum on an annual basis every single year. We did, though, take a look at the increased state funding, and we grew it for caseload and also inflation and brought it to the current day, and say, "Has the State increased -- maintained that increased amount over time?" And, yes, indeed, we found that the State has maintained that increased funding.

Now, there's been discussion regarding marginal cost and average cost and what was the State's obligation. With the State's Master Plan for special education, the State did not commit to fully funding the Master Plan. There is specific language throughout the Master Plan that says, for example, the State will not provide for more than funding than for more than about ten percent of the general education population. It also says very clearly that in any year that the State does not appropriate full funds to support the Master Plan for special ed, that these funds shall be prorated amongst all the local school districts.

You must remember that in the year this thing passed, the State had just finished going through this entirely very difficult process of bailing out local governments. The State was working in an operating deficit. All the pre-proposition state funds were to be exhausted by about the year 1981. So we were operating in a deficit. The State was acutely aware of the financial straits it was under. Inflation was growing very hard, very, very fast. The State was not in the

position to absorb a large program that was largely controlled at the local level.

So we did increase deliberately our funding for special education. It was about 90 million dollars over the prior program. We did not commit to fully funding the Master Plan forever after. The 90 million dollars was viewed by the staff as fully sufficient for funding the increased procedural requirements.

With that, I'd be happy to answer any questions.

CHAIR PORINI: Mr. Beltrami?

MEMBER BELTRAMI: Ms. O'Malley, did you hear Mr. Murray's reading of the legislative language that says that the Legislature finds this to be a federal program, and that it does not intend to make it a state program?

MS. O'MALLEY: What he was referring to is the educational program. And that I would agree with. It was not the State's intention to have a higher educational program. The stuff that's mostly the additional state mandates, it's largely procedural kind of stuff.

MEMBER BELTRAMI: Madam Chair, may I just ask question of our attorney, Mr. Stone?

Mr. Stone, I hate to use simplistic examples, especially since the Controller pointed out that the forest example was perhaps inappropriate, but if someone came -- if Mr. Gates read about this and decided to give

the State 2 billion dollars today for special education costs, would you say that there's no case here at all, because now there's more revenue than a problem?

In other words, it seems to me that you don't point out the source of the funding. It's like the trees. If the trees are watered, from whatever source, the neighbor can decide to water the trees, I guess; that there's no obligation to XIII B. That isn't what XIII B says.

MR. STONE: Our point is that there's no obligation to fund the federal program. The State has no obligation to fund the federal program. The federal program falls on states and on local educational agencies alike; and it's not state mandated, precisely because it is federal.

MEMBER BELTRAMI: Then why did the State fund it, when they had no obligation?

MR. STONE: Well, because they were contributing to this required special education program and services, and they're contributing very generously.

But the answer to your question, of course, is, if there's an influx of money from some --

MEMBER BELTRAMI: Whatever source?

MR. STONE: -- private source, that suffices to cover all the expenses, then, of course, we wouldn't be here. I don't know if the funding would go backwards in time to cover the entire claiming period. But, I mean, the whole point of being here, as I understand it, is

because of a claimed shortfall between state funding and required special education programs and services.

MEMBER BELTRAMI: Well, excuse me, I thought we were here because I've gone through four years of hearings to decide that eight specific programs were state-enriched programs over and above federal requirements; and that under the Constitution, I thought that required reimbursement by the state directly for those eight programs.

MR. STONE: Only if they're found to be unfunded. That's the other element, and that's the element before the Commission this morning.

CHAIR PORINI: All right, Commissioner Angelides, you had one question; and then Commissioner Halsey had a substitute motion, I believe.

VICE CHAIR ANGELIDES: Actually, I'm just going to make a brief statement. And before we go to the motion, I promise to make it brief, and that is that as my fellow commissioners know -- and all of you know -- I actively urged that negotiations take place to resolve this now 20-year-old dispute on behalf of the children of California, and candidly also on behalf of what I thought was right for the State of California, in terms of resolving this matter and quantifying the cost of resolution.

I am disappointed that the negotiations have not borne fruit. But on that score first, before I go to my inclination on this motion, let me say that the

process is not, nor should it be at an end. That while this Commission will act today, the actual resolution of this matter, notwithstanding the adoption of P's and G's, if those are adopted today, and notwithstanding the fact that claims will be sent out to school districts, ultimately this matter will require claims to be made and an appropriation to be made; and the State to, if there are, in fact, in the end of the day, barring some court action, it will require action by the Legislature and the Governor.

And so I stand here today saying that I hope very much, no matter what this Commission does today, that, in fact, the negotiations will continue, because it is in the best interest of the children of California and the State of California to provide the back-funding that is fair, as well as the forward-funding that will allow for proper education of children, and to do so in the context that allows the State to quantify going forward with what its obligations and costs and liabilities are under this case. And so I don't think that we want to view this as the end.

Unfortunately, I was hoping that we would be at an end point. But I very much hope that the Administration, the Legislature, and the claimants will engage in the fullest types of negotiations to resolve this matter fully, fairly, and as rapidly as possible.

As to the matter before us today on the Controller's motion, I intend to support the Controller's

motion today. And the reason I'm doing so is very simple. The reason I asked Mr. Stone about the proportionality comment is relevant to my views; and that is, at the end, I can see proportionality as the basis for a rational settlement between parties as to a fair resolution of this dispute.

I do not see in the statute an argument for proportionality. So, therefore, we are left with whether the statute and the Constitution requires us to provide reimbursement for what had been determined to be state-mandated costs, as we read the statute; or whether, in fact, we take the alternative view that those costs have been, in fact, fully, if not, according to the Department of Finance, not just fully but more than fully funded.

I read the statute, having spent much time on this matter, as requiring reimbursement. Like it or not, the statute is very clear in my mind as a specific designation. It may not be the policy that I would fully embrace, but it is what the statute calls for. And, therefore, I intend to support this motion today.

Let me make just a couple other comments in this regard, and that is that having been a legislative staff person in 1980, I'm actually -- I find it heartening that people's memories are that good. But, you know, in the end, having been a legislative staff, I know that what passes for intent, what's written in the staff's analysis, frankly, can't fully capture

legislative intent because of the complexity of the institution. I know enough about what I wrote as a staff person to fairly say it probably didn't capture the views of all 120 members at the time. And, therefore, what we're left with -- what we're left with is, in fact, our reading of the statute today.

And I need to say that -- and that's no disrespect to the Legislative Analyst and I appreciate all the work you did -- and in the end, I wanted to see if there was a definitive reading on legislative history that would allow me to complete my reading of the statute. And while it was helpful in terms of giving me background; it did not, in the end, alter my view of the statute.

One final point I want to make: At the end of the day, there is not enough money for special education for children in the State of California. What no one has disputed at this table is that for 100 dollars of need, there's 100 dollars of funding. And while, in the end, it appears as though the federal government particularly has defaulted in its obligations, that does not relieve the State -- and in the final analysis, it is a primary obligation of the State of California to fund education. School districts are creatures of the State of California. School districts have nowhere else to look for this funding. Given what we did as a state with Proposition 13, they have nowhere else to look for this funding in the State of California.

Now, maybe appropriately the State of California should look back to the federal government and the administration, either through its good offices of advocacy and/or through the federal courts should seek remedy. But school districts have no other remedy. And at the end of the day, given the statute and the fact that there is a shortage of funding and there is no other pursuit of remedy for school districts, I believe the motion that's been made today by the Controller is one that I can, will, and must support.

CHAIR PORINI: All right. Commissioner Connell had a comment, and then we'll go to the substitute motion.

MEMBER CONNELL: Right. I just hope that we have general sentiment on the board today because I personally know I speak for Joann and others who have joined me on this board for a period of years. This is a delay of another -- unfortunately, another year and a half into this administration. I think this is long overdue. This is something that I wish we could have decided in 1995, when I joined the Commission.

I only hope that as we make this decision today, that it moves forward. I intend to be as aggressive and promotional as I can be, if I get adoption of this motion today with the Legislature, because I do think we need to move this forward. I think we have a clear case of full funding in this.

I'm not going to speak to the issue of revenue

because I said in '95 the same thing I'm saying today. This has never been an issue of revenue, to me. This is an issue of principle and it's an issue of legal fact. We have a mandate and it needs to be funded. And it's a matter of our principle position.

And I won't speak to revenues because they're irrelevant, as I'm constantly reminded when I chair the tax boards and where Annette joins me. We have to make decisions based on the principle and the legal context in which we're engaged. And I think both principle and legal context here weigh for adoption of the motion that I have on the floor.

CHAIR PORINI: All right, Commissioner Halsey?

MEMBER HALSEY: I'd like to make a substitute motion, that the Commission vote "yes" on 1C. And that's the alternative position that we've been debating this morning.

And alternatively -- can you make two motions -- I'm sorry, the procedure is new to me here.

CHAIR PORINI: Why don't we deal with the first motion?

MEMBER HALSEY: Sorry, okay.

CHAIR PORINI: All right, and I will second that motion and make only a brief comment to the fact that also, as a former legislative staff member, I recognize that oftentimes attorneys call staff members and call committees and ask for analyses that were done at the time that bills were heard, because they're trying

to establish just that: Legislative intent. And they go to the documents that show it.

So I will only comment that I was convinced by a Legislative Analyst document, which was excellent, as well as the fact that I took the liberty of going to the archives and getting those documents and reading them, and seeing what they said because I believe that's what our attorneys here would do to show legislative intent to the courts.

So I don't know if there's any further discussion on the substitute motion.

VICE CHAIR ANGELIDES: I just had a very, very quick comment, which is on the substitute motion.

By the way, Ms. Porini, I wasn't meaning to discount that so much as to say that having not found it definitive, in addition to additional conversations I had, that was really my context for that comment.

CHAIR PORINI: Fine.

VICE CHAIR ANGELIDES: The only other thing I wanted to say, and this is partly directed back to the claimants and this goes to this motion; in urging negotiations, it's always a two-way street. And while, you know, it takes two to tango, I would say this: That while we vote on what we believe the law is, I've always believed that both parties have some risk here. I think there's real merit to the notion that a settlement should be based on proportionality. I don't see the basis, I just want to say, for being able to do it here at the

Commission. But I do want to admonish both parties, including the claimants, to do the best they can to reach a resolution because, in the end, both parties risk full position, I believe, by going to court, just as those full positions have been before this Commission.

CHAIR PORINI: All right, so we have a motion and a second on a substitute motion, which --

MS. GAITHER: Madam Chair?

CHAIR PORINI: -- includes Option 1C --

Yes, Ms. Gaither.

MS. GAITHER: I'm sorry to interrupt. As I understand the motion, there are two parts, and there hasn't yet been any statements or discussion of the uniform cost issues. So I wanted to ask, before you took a vote, if we could present some information on that issue, since, as I understand the motion, it addresses both the offset as well as uniform costs.

MEMBER CONNELL: Are you referring to the substitute motion? We're talking substitute here.

CHAIR PORINI: 1C.

MEMBER CONNELL: I think her motion is speaking specifically to a narrower issue.

CHAIR PORINI: Exactly.

MEMBER CONNELL: I don't mean to define your motion, but that's the way I understand it.

MEMBER HALSEY: Yes.

MEMBER CONNELL: Thank you.

CHAIR PORINI: Okay. Depending on the outcome

of this motion, we'll go back to discussion.

May I have roll call?

MS. HIGASHI: Mr. Angelides?

VICE CHAIR ANGELIDES: No.

MS. HIGASHI: Mr. Beltrami?

MEMBER BELTRAMI: No.

MS. HIGASHI: Ms. Connell?

MEMBER CONNELL: No.

MS. HIGASHI: Ms. Halsey?

MEMBER HALSEY: Yes.

MS. HIGASHI: Mr. Lazar.

MEMBER LAZAR: Aye.

MS. HIGASHI: Ms. Steinmeier?

MEMBER STEINMEIER: No.

MS. HIGASHI: Ms. Porini?

CHAIR PORINI: Yes.

MS. HIGASHI: The motion fails.

CHAIR PORINI: That motion fails, so we're back on the main motion, which incorporated two issues.

MEMBER CONNELL: Yes. Do you want me to read it again?

CHAIR PORINI: Please.

MEMBER CONNELL: I move that we adopt Option 1A of the staff write-up to allow the Parameters and Guidelines to include language to explain that additional revenue specifically intended to fund the cost of the state mandates shall be deducted from the costs claimed; further, that we adopt Option 2A of the staff write-up to

find that the use of uniform cost rates is consistent with the Commission statutes and regulations.

CHAIR PORINI: So we have not had any discussion on the issue of uniform cost rates.

Would the maker of the motion like to divide the question?

MEMBER CONNELL: I'll be happy to divide my question.

And if my second will agree to divide my question?

MEMBER STEINMEIER: That's fine. If that helps expedite things, yes.

MEMBER CONNELL: So we will move on the part, which is adopting Option 1A of the staff write-up.

CHAIR PORINI: All right. If there's no further --

MEMBER BELTRAMI: Madam Chair?

CHAIR PORINI: Mr. Beltrami?

MEMBER BELTRAMI: Madam Chair, I'm going to support this motion because of the testimony we've had -- or the elongated testimony. I wanted to second the Treasurer's comment, as the public member, how disappointed I am that the five or four months that were allowed for negotiation proved to be less than satisfactory to everyone. And hopefully, as you mentioned, it will continue, because that would be the much better answer for the public and the children.

CHAIR PORINI: All right, any further

discussion?

All right, may we have roll call on 1A?

MS. HIGASHI: 1A.

Mr. Beltrami?

MEMBER BELTRAMI: Yes.

MS. HIGASHI: Ms. Connell?

MEMBER CONNELL: Yes.

MS. HIGASHI: Ms. Halsey?

MEMBER HALSEY: No.

MS. HIGASHI: Mr. Lazar?

MEMBER LAZAR: No.

MS. HIGASHI: Ms. Steinmeier?

MEMBER STEINMEIER: Aye.

MS. HIGASHI: Mr. Angelides?

VICE CHAIR ANGELIDES: Aye.

MS. HIGASHI: Ms. Porini?

CHAIR PORINI: No.

MS. HIGASHI: Motion carries.

VICE CHAIR ANGELIDES: Don't we start with "A"?

MEMBER CONNELL: I don't know, somehow the
alphabet slipped, but I --

CHAIR PORINI: Mr. Beltrami is to blame for
that.

MEMBER CONNELL: You get to rotate. See, now,
I get to be the first in position next time. We're now
to the C's.

MEMBER STEINMEIER: You figured it out.

MEMBER CONNELL: I figured out how this works.

It's taken me six and a half years, though, but I've got it down now.

CHAIR PORINI: All right, well, so we now have the second half of your motion before us.

MEMBER CONNELL: Oh, I'm sorry, let me present the second half. That we adopt Option 2A of the staff write-up to find that the use of uniform cost rates is consistent with the Commission statutes and regulations.

And I suppose my second is still there?

MEMBER STEINMEIER: Yes, it's still here.

CHAIR PORINI: All right, we have a motion and a second on that. We've had no discussion of the issue of uniform costs versus offsets.

Ms. Gaither, did you want a statement?

MS. GAITHER: Yes, thank you.

We have also filed briefs in this matter. But we think it's important to distinguish between when it is appropriate to use uniform costs in a mandate reimbursement and when it is not. And in most of the cases where the Commission chooses to use a uniform cost rate, it is for activities that are largely uniform, that is, they are the same in nearly every case and in every district where they're done: Typing a letter, mailing, postage, Xeroxing, administrative tasks that are essentially the same, no matter who does them or for what purpose.

In the case of special education, the services and everything associated with them are individual.

Federal law requires that all services provided to special education pupils, in fact, be delineated in an individualized education program. Thus, they are not appropriate for a uniform costs determination because they are not uniform. They are, by definition, individual to each pupil and to each district.

The Commission staff have indicated that it would be burdensome and prohibitive for school districts to go back and actually determine their actual costs because they don't have records in these cases for the past number of years. However, the uniform cost rates suggested by both the claimants and the Commission staff requires some documentation, including numbers of teachers, numbers of students, dates of birth, et cetera.

So the argument doesn't work. If you have documentation for some of those things, then you should have documentation for all of it.

(Mr. Angelides left for the day, and

Ms. Barbara Lloyd sat in for Mr. Angelides for the remainder of the hearing.)

MS. GAITHER: Nevertheless we have proposed a compromise which we think should be considered by the Commission, and that is to develop specific Parameters and Guidelines delineating actual costs and choose one fiscal year in the past that's already occurred, require every school district to determine their costs for special education pupils for these eight mandates during that year, and use that year as a basis for determining

reimbursement for prior years and into the future, if the Commission wishes to use some sort of uniform cost rate.

To simply develop a number that's based on one district where there doesn't appear to be any actual cost data associated with it, would be irresponsible and would result in the gift of hundreds of millions of dollars of public funds.

MEMBER CONNELL: May I ask that Riverside and counsel respond to this, please?

MR. CLARKE: Certainly. The starting place, the regulations of this Commission provide whenever possible an allocation formula or uniform allowance should be used as a basis for reimbursement. It's the basic regulation, the basic point of this discussion.

The only other issue then is, is a methodology used in developing the uniform cost allowance formula a reasonable one under the circumstances? The answer to that has to be "yes." When you read the declarations -- and I'm going to refer, just for purposes of example, to the declaration of Dr. Caryl Miller, the Director of Riverside County SELPA. She explained that her opinion that the uniform costs were reasonable was based upon the fact that they reviewed the Parameters and Guidelines and were reviewed by and provided and received input by the State SELPA Directors Organization, as well as her personal experience as a person with well over 20 years of experience in the area.

Under circumstances like this -- and I would

submit -- and it's obvious, I'm the second generation of lawyer literally involved in this process. Five years ago, my hair was much more brown than it is now. I would suggest that in a situation like this, the Commission needs to rely upon the expertise of the experts that have provided the declarations and use a reasonable method of determining the uniform costs. That has been done here, and this method should be adopted by the Commission.

CHAIR PORINI: Ms. McDonough?

MS. McDONOUGH: Yes, let me just add, as I know the Commission is well aware, that costs for preparing mandate claims are also mandated. And that means that for each hour that someone spends delving into their records to get more and more exactitude, the Commission -- the Legislature ultimately has to spend money for that. So we think that the staff in its analysis mentioned that that makes this not only very burdensome but very costly. And we don't think that makes sense.

We've spent a lot of time and effort to make these just as careful and exact as we could.

CHAIR PORINI: Mr. Clarke, you wished to add?

MR. CLARKE: And very, very briefly.

I'm very sensitive to one thing that was stated earlier, and that is a suggestion that using this uniform method, under these circumstances, would constitute some form of gift of public funds. It would not.

Several professionals in the area of special

education have declared under penalty of perjury that these costs are reasonable. I believe that those persons -- their integrity, and that is basis enough -- their integrity based upon their professional expertise is basis enough for this Commission to act appropriately in this situation.

CHAIR PORINI: I'd like to make one comment. I don't wish to impugn anyone's integrity because some folks certainly have a lot more experience than I do; but maybe the Controller could comment on audits that she does for school districts.

Does everyone always do an audit in a manner that is going to be consistent and across the board, and come up with the same --

MEMBER CONNELL: Don't even start me on school districts. You could hear my litany. I don't know which school district I'd even want to refer to the average daily attendance or the charter schools, the abominable condition of the school on finance records is something that I should probably not address at this meeting.

I mean, there doesn't seem to be consistency of records, which is what we've discussed, as you know, with your department and which is the reason why the Governor has generously given us more money to try to remedy that problem. But I happen to think that because we're in a mandated situation, the uniform cost is the best way. And I just would like to point out that if you had to have us come in and audit every time there was a dispute,

the cost -- I think I run an efficient department -- but the costs would just be exorbitant.

CHAIR PORINI: Well, I certainly appreciate that. But I think where I was going is the fact that I personally would feel more comfortable if we had some basis, even if it's some period of time shorter than a year's look at that costs for special education. It just --

MEMBER CONNELL: Then I would like to just suggest something. And Finance and I are together on this. You know, we have to look at two different things here. Historically, you can't expect anyone who's going to have records, Annette, that would go back. And so uniform costs is going to be -- you know, would be the only way. You could really relate to the exposure here.

But what we're trying to do currently with the Department of Finance on these school district audits -- and this is just another reason to move to this -- is that we need to have a much more accurate way, a ledger which is consistent. And I would like to have the support of the education groups in the audience here today -- we need to have a singular system of accounting at the school districts because there is just no rhyme or reason for the discrepancy of what goes into what line account. And it makes it almost impossible to unfold rolls, once you're trying to figure out where the audit track goes.

So Annette is totally correct on the need going

forward to look at trying to maintain a different set of records.

I must tell you, I don't think these records exist, from our analysis, and that's why we're having trouble going backwards. You just can't go backwards and recreate these records for the school districts. There's just -- there's not material information that provides this.

I think uniform costs, it's a way we're going now. And most of our audits, when we go backwards, we go with uniform costs now in the Controller's office.

MR. BELTRAMI: Madam Controller, from a public perspective and for information, isn't this the responsibility of the Department of Finance to show leadership to the school districts throughout the state, as far as standardizing forms and that sort of thing?

And that's just an information question. I don't --

MEMBER STEINMEIER: Get your foot out of the your mouth.

MEMBER CONNELL: I am simply the State's auditor in this matter.

CHAIR PORINI: I don't think the Department of Finance puts together the J-50 form, so I don't think it falls on the Department of Finance.

But I think both parties have made a good point that we need to make forms that are understandable and easy for school districts and auditors to use.

If I can get back to my point, though;

Ms. Gaither, you were suggesting that if we were to go ahead with uniform costs, it might be nice to have something to base those uniform costs on?

MS. GAITHER: I think -- and, obviously, before you could do that, you would need to finalize the decisions on the specific language of the Parameters and Guidelines, which is the next issue not yet under discussion. But our thought was that, if the Commission desired to use some sort of uniform-cost basis for going backwards in time, that you pick a recent fiscal year, use that year to do an actual cost accounting for whatever Parameters and Guidelines are decided upon by the Commission, and then take those costs and deflate them backwards in time. They would still obviously have to be associated with numbers of students, numbers of teachers, et cetera; but that's no different than what the Commission staff and the claimants have already essentially proposed. They still have to have some level of records, but they wouldn't have to have cost records for the prior years.

We, of course, would still maintain that we would want to use actual costs going forward into time. But at least if you had one year that represented something approaching actual costs for several districts, so that it could be a statistical analysis -- or for all districts, and each district can use their own costs, going backwards. Our concern is that some of the uniform

costs proposed by the claimants appear excessive, when we look at actual costs for some students.

And we think it's unreasonable to make assumptions that every special ed. student would have the same level of cost of services. Because, as we know, they're all individual: Some are more expensive and some are less expensive.

MEMBER STEINMEIER: I agree.

CHAIR PORINI: Commissioner Steinmeier?

MEMBER STEINMEIER: I have a question for Ms. Gaither.

I don't have any problem in corroborating the numbers. I think that's a reasonable thing for the Commission to ask. But do you actually anticipate that we'd look at a thousand school districts in California to corroborate the number or would some lesser number be statistically accurate enough?

MS. GAITHER: Well, I defer to the Controller's office on developing what a statistically valid sample would be. However, I should point out that if all 1,000 school districts are going to be claiming, then those 1,000 school districts should be able to look at their costs for the Parameters and Guidelines for only one year, so it's still one year out of 20 and is significantly less expensive and would at least give everyone the assurance that the costs are based in reality for those districts.

MEMBER STEINMEIER: Then I have a follow-up

question for the Controller.

How many would we actually have to do in order to come up with a real good number?

MEMBER CONNELL: I don't have the chief of my audit division here today so I'm not going to comment on the record of what would be a statistical accuracy for the school districts represented. But we're also talking about 20 years.

MEMBER STEINMEIER: Right.

MEMBER CONNELL: I mean, which year are you going to pick --

MEMBER STEINMEIER: Right.

MEMBER CONNELL: -- to determine the accuracy of these numbers? Are you going to pick random years? And on what basis do you pick those random years? So you're not only going to have to do a time-series analysis, you're going to have to do a random-derivation analysis. I mean, this becomes quite complex.

MEMBER STEINMEIER: That's my concern -- and too expensive.

CHAIR PORINI: I'll recognize Ms. Berg; but let me, just for the record, state that Barbara Lloyd has taken the Treasurer's place.

All right, Ms. Berg?

MS. BERG: Thank you, Ms. Porini.

The only thing I want to add is that there's an assumption being made here, although it's not been spoken, that the current Parameters and Guidelines, where

we talk about unit time, as well as unit cost, are not based in actual numbers. That's an erroneous assumption.

We have been developing, with the support of the Controller's office, for about 20 years now "unit cost rates." And we do base those on precisely the methodology that Ms. Gaither has described to you this morning. In order to come up with those numbers, knowing what the State Controller's office would, in fact, like to see, we, again, with two ideas in mind -- one, to keep the costs reasonable; and two, to understand that there are high costs as well as outliers that are very low -- reach an average reasonable cost for 20 years' worth of reimbursement. That's the goal of the past year. It's to simplify this whole process and not continue to add costs to the State of California.

CHAIR PORINI: All right. We have --

MEMBER CONNELL: I call for my motion.

CHAIR PORINI: All right, we have a motion and a second before us to adopt Option 2A.

May I have roll call?

MS. HIGASHI: Ms. Connell?

MEMBER CONNELL: See, I was right. The C's finally prevail. I've been waiting for six and a half years for you to get to the C's. I think this is the first time we've had this many motions on the floor.

I, of course, vote "yes" for my motion.

MS. HIGASHI: Ms. Halsey? Ms. Halsey?

MEMBER HALSEY: I'm sorry, I was asking for

clarification.

MS. HIGASHI: The motion is for approval of Option 2A, which is that the Commission finds that the use of uniform cost rates in the Special Education Parameters and Guidelines consistent with the Commission statutes and regulations. It does not adopt --

MEMBER HALSEY: Or existing estimates of --

MS. HIGASHI: No, no, this stops short of that. The Commission would find that the use of the uniform cost rates in the Special Ed. P's and G's is consistent. But we have not gotten to the point of saying which rates. Okay?

MEMBER HALSEY: Yes.

MS. HIGASHI: Mr. Lazar?

MEMBER LAZAR: Aye.

MS. HIGASHI: Ms. Steinmeier?

MEMBER STEINMEIER: Aye.

MS. HIGASHI: Ms. Lloyd?

MEMBER LLOYD: Aye.

MS. HIGASHI: Mr. Beltrami?

MEMBER BELTRAMI: No.

MS. HIGASHI: Ms. Porini?

CHAIR PORINI: No.

The motion carries.

Okay. All right.

MS. HIGASHI: The next issue is for the Commission to decide which version to adopt as proposed or modified, in whole or in part; or whether or not the

Commission wishes to make any other motions directing staff, or inviting any other suggestions from the parties.

CHAIR PORINI: All right, Commission members?

MEMBER CONNELL: I would like to direct staff based on our discussion today of what language would be appropriate. Maybe you can help me in merging language here, given the actions that we've already taken today. I just think we need to urge staff to follow the options included under page four of their staff opinion.

Is there any specific language I need to include in my motion to give you direction?

MR. SCRIBNER: To be consistent with those motions, essentially you would be asking to adopt Exhibit A, which is staff's Proposed Parameters and Guidelines, which include uniform cost rates, as presented by the claimants.

MEMBER CONNELL: Yes, that would be my motion. Thank you.

MEMBER STEINMEIER: Second.

CHAIR PORINI: We have a motion and a second. Discussion?

MEMBER BELTRAMI: Madam Chair, I thought Ms. Gaither made an excellent point about setting a point in time with this 19-year-old monstrosity we've been dealing with. And it seems to me unfortunate that the plaintiffs aren't willing to work something out with the Department of Finance on that one issue. And I would

think staff might want to get involved in that as well.

CHAIR PORINI: All right, any other comments?

Mr. Beltrami, I agree with you. I don't know whether we have enough information before us. I don't know if anybody's done a matrix that compares any of the various positions, any years. I mean, clearly there was one year under discussion that Ms. McDonough referenced, that apparently the Department of Finance provided some information.

But I don't feel comfortable going forward at this point in time without a little more information.

Any other --

MS. McDONOUGH: Could you explain what kind of information? What do you mean by that?

CHAIR PORINI: Well, I have a difficult time going forward with the Parameters and Guidelines that are before us that just seems to be completely open-ended for districts. I mean I just simply agree with Mr. Beltrami that we don't know what one district -- we don't know what the playing field looks like.

MS. McDONOUGH: Ms. Porini, I wonder if we might have a short break, a recess. I'm thinking because we've gotten through two very important hurdles, and just for us to try to focus our attention on exactly how these would work and answer your question.

CHAIR PORINI: I think the Commission members probably would agree to a ten-minute break at this point.

Thank you.

(A recess was taken from 11:18 a.m. to 11:31 a.m.)

CHAIR PORINI: All right. If we can take a brief recess in our action on this, just for a tiny bit of fun, we have -- all right, Ms. McDonough, we get to have a little fun.

We actually have one member of the Commission who has been here through thick and thin for a year and a half who is leaving. She said at our last meeting that that was her last meeting. But she's back here in the audience. So maybe Millicent could come forward for just a moment.

On behalf of the Commission, I get to read, very quickly, a resolution thanking you for your service and wishing you well on your new job.

So, "Whereas" -- and this is in small print -- "Whereas Millicent Gomes has distinguished herself as a member of the Commission on State Mandates, representing the Director of the Office of Planning and Research; and whereas she has advised and influenced the Commission in determining if counties, cities and other local agencies, including school districts, should be reimbursed pursuant to section 6, Article XIII B of the California Constitution, and section 17514 of the Government Code; and whereas she has participated in hearings and approving Butte County's application for finding of significant financial distress" --

MS. GOMES: Now, that was fun.

CHAIR PORINI: -- "and whereas Millicent is

being honored by the members and staff of the Commission on State Mandates in appreciation for her outstanding dedication, leadership and service to the State of California. Now, therefore, be it resolved that the Commission on State Mandates warmly congratulates Millicent Gomes on her appointment by Governor Gray Davis as Chief of the Mentally Ill Offenders Services Program in the Department of Corrections."

MEMBER CONNELL: Is this what we've done to you, Millicent?

MS. GOMES: It's based on prior experience.

MEMBER CONNELL: Is it your empathy with the mentally ill that has been the result of your experience with this board or --

MS. GOMES: Somewhat.

MEMBER STEINMEIER: I think I'm getting out now, while the getting's good.

CHAIR PORINI: All right, Millicent, this resolution is not yet in its frame. We just had all of the members sign it, but I just want to thank you and wish you well.

MS. GOMES: Thank you.

(Applause)

CHAIR PORINI: Okay, a brief break there.

MEMBER CONNELL: Madam Chair, can I ask that staff read my motion, so that we have clarity as to what it is? My motion is once more for the commissioners' review. I think after the break, you might appreciate

hearing it once more.

MS. HIGASHI: What I had written down was for the Commission to adopt --

MEMBER CONNELL: Let's see if they can get it for us in the exact language. I think they've been refining it during our break here.

MS. HIGASHI: Oh, okay.

MR. SCRIBNER: Actually, during the break, we were refining some of the language in the Parameters and Guidelines themselves.

But off the top of my head, I believe what the motion was, was adoption of Exhibit A, claimants -- or staff's Proposed Parameters and Guidelines, which include claimants uniform cost rates.

MEMBER CONNELL: And there was a second to that.

I would like to hear the applicants' response to that motion, if I may, Madam Chair.

CHAIR PORINI: Certainly. We have a motion and a second, so we'll go through discussion by members.

Mr. Clarke, did you want to comment?

MR. CLARKE: Yes, just very briefly, if I might start.

We would be in support of the motion.

And I wanted to clarify just a couple of points.

One, I think it's important that the Commission move forward today in as reasonable of a way as possible

in adopting the Parameters and Guidelines pursuant to the motion, to do so.

One thing that's been -- Mr. Stone and I get along fine; but it's crystal clear to me over the past five years that if you give us an opportunity at some time to disagree upon something, we will find something to disagree upon. It is appropriate for us to move forward based upon the facts that were set forth in the declaration.

I wanted to clarify one point. These Parameters and Guidelines, the uniform costs that were included in them, did not come out of thin air. Again, referring to Dr. Caryl Miller's declaration, at page three, paragraph eight, specifically, "I have approximately ten years of direct personal experience, and have kept records documenting the amount of time and resources that the Riverside County SELPA has spent in recent years on various activities that have been determined by the Commission on State Mandates to be a special reimbursable state mandates."

Paragraph nine, "For example, with respect to the maximum age limit component, I have reviewed the records of the Riverside County SELPA, and have found that 152 22-year-old students have received special education services in Riverside County over the past 19 years."

These numbers were not manufactured. They were the result of an analysis of records; and the Riverside

claimant is one of the few claimants in a unique position where we did have substantial documentation for the vast majority of the special education requirements that were found to be state mandates.

So I wanted to have the Commission have some level of comfort -- or a great level of comfort that these numbers were based upon hard documentation. They were simply not kind of numbers drawn out of the air.

CHAIR PORINI: All right, Ms. Gaither?

MS. GAITHER: If I could just deal with one example from the Parameters and Guidelines that are now before you in the motion, one of the drafted Parameters and Guidelines would suggest that for every student over the age of 18 -- or 21, whichever of the two adult students we're talking about -- that there be an assumption that six months of services are provided to that student and that the cost of service is 1,874 dollars per month for those students.

This, despite the fact that we don't know when that student turned 21, so we don't know if they were provided with one month of service or nine months of service, depending on when, during the school year, they turned 21. We also don't know what level of service they were receiving.

1,874 dollars a month is merely the cost of a private school placement.

MEMBER STEINMEIER: That's right.

MS. GAITHER: We don't know if those students

may have been receiving only resource specialist services, they may have only been receiving other kinds of therapy that are significantly less expensive than that. And that's just one example.

If the school districts can go back in time to count how many students over the age of 21 they had and know that they turned 21 during the school year, surely they can tell which month they turned 21, so that we can know exactly how many months of service were provided. And they should be able to note what the cost of the services were for those students -- 22, 21.

MEMBER STEINMEIER: 22.

MS. GAITHER: 21, 22 -- but the point is the same. It's an assumption that those costs are the same for every single one of those students statewide, when we know that that's not the case. Some are going to be significantly more expensive, no question about it; and some are going to be less expensive.

And while everyone assumes that the Department of Finance is only interested in saving costs, the truth is, we would rather pay more if those are the actual costs, than to pay an average amount and be overpaying, in some cases.

So we urge the Commission to do a different option. Since you have adopted the concept of uniform cost rates, we urge you to look at one fiscal year. This is no different than you do for other uniform cost rates for other types of mandated claims and for other

school district claims. They look at actual costs, as determined by Parameters and Guidelines; and then from that, determine a uniform cost rate.

We don't think it's reasonable to simply take numbers provided by one school district in the state that, as far as we can tell, are unverified and unaudited, and apply those statewide for 20 years of claims and into the future.

MR. CLARKE: May I respond very briefly?

CHAIR PORINI: Mr. Clarke, a comment?

MR. CLARKE: The assertion that -- I'm glad Ms. Gaither chose the 22-year-old example. This is explained in detail in the declaration of Dr. Miller. And the assumptions were made is simply not accurate.

Dr. Miller went on to note, as she explained, that the maximum-age limit component was reasonable to state, "Please note that in December 1993 there were 221 22-year-old students statewide. In that particular year, Riverside County SELPA represented five percent of that statewide figure. All of these 22-year-old students were identified as severely handicapped, requiring placement in special day classes. These students received services an average of six months after their 22nd birthday, at a cost between 1,750 dollars to 2,000 dollars per month, including transportation. The variance in costs is a result of the number of related services required by each student. On the average, these 22-year-old students cost SELPAs approximately 1,875 dollars per month of

service."

She goes on to explain in more detail the basis for that.

The point here is, if, as Ms. Gaither pointed out, you're going to have some students who require more services and some who require less. In any uniform cost concept, you're going to be using average numbers, an estimate based upon hard data in each situation.

Therefore, it sounds like Ms. Gaither is actually resisting the underlying basis of the uniform costs, that is, we don't want to apply uniform costs; we want to try and get down to each particular student.

This Commission is already going along the line of uniform costs. There is a proper factual basis for you to implement it in this situation. I believe the motion should be upheld.

CHAIR PORINI: Any other questions or comments?

MS. McDONOUGH: Could I add one point, Ms. Porini?

CHAIR PORINI: Yes.

MS. McDONOUGH: We had mentioned Dr. Miller's declaration because Riverside did have extensive records. But I think it should also be noted that there were numerous other declarations submitted. Most importantly, the claimants made every effort to get a declaration from someone who represented a small SELPA, that was Dr. Carrie Mills for Calaveras; and from someone who represented a mid-sized SELPA, Dr. Julie Whelton of

Contra Costa. And these declarants also spoke to the uniform costs in almost every area.

That's how we established these costs. We did not make them up.

MR. CLARKE: I might also add -- and this will be my last point -- as Dr. Miller explained in her declaration, not only were these cost estimates discussed among the persons who gave their sworn declarations, they were also discussed among state SELPA directors at the meetings in November of 1998, December of 1998, twice; and then March of last year. These things have been discussed extensively throughout the state. They are a proper basis.

CHAIR PORINI: Let me ask staff for clarification. From our September binders, we had two sets of Parameters and Guidelines, so the motion that the Controller has made goes to set A, which would be the Proposed Parameters and Guidelines by staff; is that correct?

MR. SCRIBNER: That's correct.

MS. HIGASHI: That's correct.

CHAIR PORINI: Any other discussion?

MEMBER BELTRAMI: Madam Chair?

CHAIR PORINI: Mr. Beltrami?

MEMBER BELTRAMI: Mr. Clarke, you indicated that there were three SELPAs that were chosen; is that right, Riverside and then I heard Calaveras mentioned and Contra Costa?

MR. CLARKE: Yes.

MEMBER BELTRAMI: This is a large state, obviously. Did we go to Modoc or Alpine or Del Norte? Any of the small northern counties? I mean, Calaveras is in the Motherlode. We don't really think of them as north, except for you folks in the south. Everything north of the Tehachapis is north to you, but --

Could there be a variation from some of the other counties' SELPAs?

MR. CLARKE: Hypothetically speaking --

MEMBER BELTRAMI: And I understand the difficulty of trying to come up with a uniform cost.

MR. CLARKE: It's possible that there could be a variation in any form. In any uniform cost allowance formula, there's going to be some variation.

And so the issue before the Commission is, is the data that was provided of sufficient reliability and reasonableness so the Commission can make a decision.

For example, the Riverside County SELPA is composed of 20 school districts.

MEMBER BELTRAMI: Uh-huh. But it's all in the same geographical area and the same demographics, you know.

MR. CLARKE: Actually, that's not true, especially in Riverside County, since we go from the Arizona border, all the way to Pomona.

MEMBER BELTRAMI: No, no, I shouldn't say that.

MR. CLARKE: That's okay. I'll keep you

honest.

The point is that, is there sufficient information available? Yes.

MEMBER BELTRAMI: Okay. Thank you.

CHAIR PORINI: All right, other comments?

We have a motion and a second before us.

May I have roll call?

MS. HIGASHI: David?

MR. SCRIBNER: Before roll call, there is some clarification in the language that we have discussed back in September that the claimants have brought before us again.

On page three of the Parameters and Guidelines, at the top of the page, the first two sentences of that paragraph, essentially they say, "Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable."

Those two sentences will be stricken from these Parameters and Guidelines because, obviously, that does defeat the uniform cost rate purpose.

The remaining sentences, beginning with "Pursuant to," and "If the total costs," those would be combined and moved to page 14, after the first paragraph under "claim preparation." That is consistent with our boilerplate language, and it's something that we have in other P's and G's as well.

So the movement of the sentence is really a

technical movement. The substantive change would be striking those first two sentences.

CHAIR PORINI: All right, no other changes?

MR. SCRIBNER: No other changes.

CHAIR PORINI: All right. So we have a motion and a second.

May we have roll call?

MS. HIGASHI: Ms. Halsey?

MEMBER HALSEY: No.

MS. HIGASHI: Mr. Lazar?

MEMBER LAZAR: Aye.

MS. HIGASHI: Ms. Steinmeier?

MEMBER STEINMEIER: Aye.

MS. HIGASHI: Ms. Lloyd?

MEMBER LLOYD: Aye.

MS. HIGASHI: Mr. Beltrami?

MEMBER BELTRAMI: Aye.

MS. HIGASHI: Ms. Connell?

MEMBER CONNELL: Aye.

MS. HIGASHI: Ms. Porini?

CHAIR PORINI: No.

MS. HIGASHI: The motion carries.

MEMBER CONNELL: I want to say, this is a real threshold day on the part of the board. And I certainly want to thank my colleagues for the deliberation, both those who were able to move with me towards the resolution and those who had some continuing concerns.

I would just hope now that we can get these

claiming instructions out within my 60-day requirement, and that we will be able to start seeing claims come in within the 120 days that is now established by today's action. And I would urge the applicants to make sure that all the school districts are prepared to move with speed and haste because we have already alerted our staff to accommodate what we think will be a rash of claims.

CHAIR PORINI: All right, now with that, we've completed the item.

Is there any more business to come before the Commission?

(No response.)

CHAIR PORINI: All right, then hearing none, we're adjourned.

When is our next meeting?

MS. HIGASHI: June 29th.

CHAIR PORINI: June 29th? We're adjourned.

(The hearing concluded at 11:47 a.m.)

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REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were reported by me at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of the cause named in said matter.

In witness whereof, I have hereunto set my hand this 6th day of June 2000.

DANIEL P. FELDHAUS

CSR #6949, RDR, CRR

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